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Conference

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 JENNY RAMGOOLIE,

4 Plaintiff,

5 v.

16 Civ. 3345 VEC SN

6 ANDY RAMGOOLIE,

7 Defendant.

8 -----x

9

10 October 4, 2017  
11 3:14 p.m.

12

13 Before:

14 HON. SARAH NETBURN,  
15 U.S. Magistrate Judge

16

17

18 APPEARANCES

19 HOWARD ADAM BENDER,  
20 Attorney for plaintiff

21

22 TERRY ANTHONY BROSTOWIN  
23 Attorney for defendant

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1 (In open court)

2 (Case called)

3 THE COURT: Good afternoon. Please be seated.

4 I have Mr. Bender's September 14 letter. I have given  
5 Mr. Brostowin an opportunity to respond. I don't have a  
6 responsive letter, so I wanted to make sure you didn't submit  
7 one and it got lost?

8 MR. BROSTOWIN: I did not. I figured it would save it  
9 for today.

10 THE COURT: All right. So I want to talk about these  
11 issues here. Obviously, the case has shifted a little bit with  
12 the appearance of Mr. Bender, and I have reviewed his letter  
13 and I have done some legal research on my own. How shall we  
14 begin? Mr. Bender, is there anything to add to what you have  
15 in this letter?

16 MR. BENDER: No. I think the letter sets forth my  
17 arguments fairly.

18 THE COURT: Mr. Brostowin, let's set aside how many  
19 interrogatories. I feel like that is a collateral issue. I  
20 want to focus more on this issue of the types of documents that  
21 are being sought. So why don't you tell me your position on  
22 that.

23 MR. BROSTOWIN: My position is the documents that are  
24 being sought now, if I would just start through his list, as  
25 this Court well knows, the issue is now limited to strictly to

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1 liability and not to valuation.

2 The first document being sought are my client's three  
3 years worth of tax returns, 2014 through 2016. I do not see  
4 how that goes to liability in terms of whether or not there is  
5 a contract, an agreement, any type of promise to give the  
6 plaintiff any monies in a corporation. It is strictly a tax  
7 return.

8 THE COURT: A personal tax return?

9 MR. BROSTOWIN: A personal tax return, that is  
10 correct. I find that inappropriate. We can go one-by-one, but  
11 the vast majority of all of the other document requests are  
12 document requests from corporations, not from my client,  
13 corporations that have been dismissed, corporations that are  
14 not within the United States of America, and specifically Anco  
15 has not been conducting business for, I don't have exact, but I  
16 think over a year now.

17 THE COURT: As I understand counsel's argument, he is  
18 saying that here is what we know. We know there was this  
19 company Anco, we know that your clients had I think one of two  
20 shares in the beginning and then the shares switched.

21 Is that factually correct?

22 MR. BROSTOWIN: I don't think it was one or two, but he  
23 had more shares initially, and those shares, according to my  
24 client, were readjusted downward because that was an error.  
25 That is the position that has been taken for a long time in

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1 other litigation.

2 I don't want to say irrespective of whether or not  
3 what his percentage was of Anco at any one particular point in  
4 time, it is down to I believe 6 percent, I could be mistaken  
5 because I am doing different corporations now. It is below 15  
6 percent, 6, 8, I am not exactly sure what it is.

7 THE COURT: Does anybody have shares in Anco?

8 MR. BROSTOWIN: Anco has not conducted business for I  
9 think over a year now, no income, no expense, no anything, no  
10 business.

11 THE COURT: What I understand the plaintiff's position  
12 to be is that Mr. Ramgoolie had a certain number of shares. At  
13 a later point in time that was coincident with the breakdown in  
14 the relationship between Jenny and Andy, Andy reduced the  
15 number of his shares and redistributed the shares in a way that  
16 would prevent Jenny from getting any sort of control or  
17 ownership over the company, and so as I understand the  
18 plaintiff's position is that the documents surrounding that  
19 transaction as well as the transaction of shutting down Anco  
20 and starting up KDR in the same location with the same  
21 employees and the same materials, et cetera, would be  
22 circumstantial evidence in support of the argument that there  
23 once was an agreement between these two parties and that Andy  
24 was taking action that had no other legitimate business reason,  
25 and only the reason is to sort of limit his sister's

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1 opportunity for ownership and shares.

2 MR. BROSTOWIN: I will say --

3 MR. BENDER: Your Honor, that is incredibly accurate.

4 MR. BROSTOWIN: -- I will say what has been  
5 characterized as coincidental or current in time when Jenny  
6 filed the lawsuit actually predated that quite a bit. There is  
7 other litigation, as this Court well knows. My client is in  
8 the middle of a divorce proceeding of which these proceedings,  
9 there is supposed to be no transfer of documents between one  
10 proceeding to the other, especially since matrimonial is  
11 confidential in nature.

12 Andy has and had no control over the closing of Anco,  
13 the setting up of KDR. That was strictly done by I believe it  
14 was Kevin and Jeremy, so that was not -- I understand what the  
15 allegation is, but at the point in time that that occurred, he  
16 had I want to say 6 percent, but I don't want to be married to  
17 that number, but a very low percentage in the company.

18 He had no control in terms of any operation of the  
19 company since 2014, three years ago. I have documents to show  
20 that. I have a document from the accountant saying that my  
21 client has received ever since the formation of Anco until the  
22 day that it no longer ceased doing business, that he received  
23 not one dollar from that company, he never received any  
24 proceeds from that company. So he was not as involved as  
25 Ms. Ramgoolie, the plaintiff, is leading one to believe.

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1                   THE COURT: Isn't it a little bit odd, he was plainly  
2 formative in the creation of Anco, right?

3                   MR. BROSTOWIN: Yes.

4                   THE COURT: So he creates this company. Ms. Ramgoolie  
5 thinks it is successful. I have no idea whether it is or not.

6                   He creates this company and at a certain point he  
7 gives up his interests without any sort of explanation. Maybe  
8 he sold them. That would be relevant. It seems like from the  
9 outsider perspective that he is just moving stuff around and  
10 giving up rights and assets without a sort of legitimate  
11 business reason. I think that is what is animating this  
12 inquiry.

13                  MR. BENDER: That is for the purpose of frustrating  
14 her efforts of showing that the arrangement that they came to  
15 was fruitful, that it developed into Anco, that it was a 50  
16 percent partner. In fact, when Anco started, Mr. Ramgoolie did  
17 have one share. I believe Kevin Ramgoolie had the other share.

18                  Those shares were then diluted until 6 percent, but  
19 the mother of Jenny and Andy, I believe, obtained somewhere in  
20 the neighborhood of maybe 45 percent of the shares, to a point  
21 where if you compare the mother's shares with Andy's shares,  
22 they had a controlling interest, exactly 51 percent of the  
23 company.

24                  Ms. Ramgoolie has also testified that while she was  
25 the bookkeeper at Anco, this was in 2014, the company was, in

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fact, very profitable. She has also testified that Mr. Ramgoolie wanted to rearrange his profitability from the company from being a shareholder to actually selling the company, merchandise, importing the merchandise from the United States and reselling it to Anco and made his money back that way. We are thinking that is what actually happened here, is that he is getting rid of his shares and he is making it up by creating companies and selling merchandise to Anco and possibly not KDR.

MR. BROSTOWIN: I don't know where she testified.

There is a lawsuit out there also I don't know about.

MR. BENDER: It is alleged in the complaint.

MR. BROSTOWIN: Be that as it may, my client has -- again there is other litigation -- has taken the position that the shares that I guess diluted or gave away, whatever term is going to be used, the initial creation was in error. It was an accounting error. That is the position he has always taken in the litigation, more specifically in the matrimonial litigation. It is not a reallocation of his equity in the company. It was just a correction of the formation of the shares when it was formed initially.

THE COURT: That seems like a big mistake.

MR. BENDER: Considering the fact there is now three other shareholders that are part of the company that are somehow left out of the original. Even if that is the case,

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1 prove it, provide us the documentation so our theory of the  
2 case can be disproven.

3 MR. BROSTOWIN: All the shareholders live in Trinidad  
4 and Tobago and they're family members, as-is the plaintiff  
5 here. This is a familial case right here. It is not like they  
6 were given to strangers. They worked the business, they do  
7 things, make the operational decisions for the company, so  
8 those type of things, the operation had always been done in  
9 Trinidad and Tobago, that is where the company is and was and  
10 is. So he is here in New York. They're doing it down in  
11 Trinidad.

12 I have been doing this long enough to know there are  
13 times when people start a company, they start to divest  
14 themselves of the company, other people are working. Instead  
15 of putting financial equity into it, they could be putting  
16 sweat equity, work equity, intellectual equity. There are  
17 things that people do.

18 THE COURT: That is the exact theory he is,  
19 Mr. Ramgoolie is bringing.

20 MR. BROSTOWIN: The issue being if other people gain  
21 equity in a company, where they did not have when it initially  
22 started, I think the intimation is that my client intentionally  
23 had given it to them for nothing, a nefarious transfer of  
24 shares in a company. That is what I think I am hearing unless  
25 I am wrong.

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1                   THE COURT: Other than relevance, do you have any  
2 other objection here to these documents?

3                   MR. BROSTOWIN: My client does not have control of  
4 them. He had no operational control since 2014. So he does  
5 not have the ability to get the records from Trinidad and  
6 Tobago, and I think there needs to be a distinction between  
7 Anco and KDR, maybe, maybe not.

8                   MR. BENDER: We have not asked for any documents from  
9 KDR.

10                  MR. BROSTOWIN: Maybe I could be wrong. If I am, I  
11 apologize.

12                  MR. BENDER: The fact they are family members which  
13 Mr. --

14                  MR. BROSTOWIN: No, you did ask about KDR.

15                  MR. BENDER: I asked about KDR, what in terms of what  
16 transfer of shares or --

17                  THE COURT: Can I encourage you to speak more slowly?

18                  MR. BENDER: KDR's reference in the request is as a  
19 possible party providing consideration for the shares or assets  
20 of Anco. I have not asked for any documents for KDR.

21                  MR. BROSTOWIN: Look at Request No. 2, documents  
22 evidencing governmental filings. I don't know how my client  
23 will get governmental filings from a company in another  
24 country.

25                  MR. BENDER: As he said before, every shareholder of

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1       this company is part of the Ramgoolie family. It is not as  
2       though there are 15 other shareholders and he wasn't a  
3       controlling member and he doesn't know who these shareholders  
4       are.

5           These are his nephews. They should be able to provide  
6       him the documents. The fact it is a foreign corporation and  
7       the documents may be located outside of the jurisdiction of  
8       this Court does not mean he does not have control over these  
9       documents, which means he should have documents over them and  
10      be able to provide.

11          MR. BROSTOWIN: One cannot say they have control,  
12       access and care and control of the documents since the person  
13       they're getting it from is a family member. The plaintiff is a  
14       family member also. I don't know how willing she would be to  
15       giving documents to my client if it were not requested as part  
16       of a document request.

17          MR. BENDER: If she were a the shareholder of the  
18       company, that would change the equation.

19          THE COURT: I don't need you all to have a  
20       conversation in front of me. I will order Andy Ramgoolie to  
21       produce documents related to Anco on the following topics:

22           Documents related to shares -- I'll start from  
23       chronologically -- documents related to the corporate creation  
24       of Anco, ITS structure, any corporate bylaws, et cetera,  
25       documents related to shareholders of Anco, to the extent that

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1 there ever was a change in the number of shares that are issued  
2 and who becomes a shareholder, all of the documents related to  
3 that including any communications that Andy has that involved  
4 decisions to transfer shares, reduce shares, dilute the number  
5 of shares.

6 And then documents that relate to the transfer of  
7 assets, both real and intellectual, from Anco to KDR, so those  
8 will be documents that reflect Anco's transfer of assets as to  
9 KDR. I am not looking for documents, not ordering the  
10 documents related to what KDR is doing now or its corporate  
11 structure at this point. It is just the transfer from Anco to  
12 KDR.

13 I am satisfied, based on the information I have and  
14 based on my knowledge of the case and the facts here, that Andy  
15 does have access to these corporate records based on his  
16 relationships and his role in the creation and growth of Anco.  
17 I will order these documents be produced.

18 With respect to Mr. Ramgoolie's tax returns, that I  
19 don't see a basis for unless there is an argument on it.

20 MR. BENDER: There isn't, your Honor.

21 As part of this overall equation here, what we are  
22 looking for is if the shares and assets were transferred, were  
23 they transferred for fair value. As part of that equation, we  
24 would need to assess what was the value of Anco during the time  
25 of these two transactions. While we don't necessarily need his

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1 tax returns, we would request that some documentation be  
2 provided so we could have an understanding in terms of what the  
3 actual value of Anco was while these two transactions took  
4 place.

5 MR. BROSTOWIN: It is my position liability needs to  
6 be established first before valuation would be addressed.

7 THE COURT: Again I think the argument that is being  
8 made here is that if this is a sham transaction designed to  
9 block Jenny Ramgoolie from her ownership interests, which would  
10 be demonstrated through significant asset transactions without  
11 any exchange of money, that that would be evidence or would be  
12 consistent with their prior agreement to share this asset, and  
13 so I agree with you that I am not requiring discovery on  
14 damages now and what the ultimate value of the asset is.

15 I think the types of documents I just ordered to be  
16 produced I think would cover what Mr. Bender is referencing, so  
17 any documents that relate to the corporate decision to go from  
18 two shares to 10,000 shares, presumably assigned some sort of  
19 value to that transaction, and then the distribution of all  
20 these shares to people who previously were not shareholders,  
21 there should be some record as to how the corporation is  
22 valuing that.

23 So those documents need to be provided, and again to  
24 the extent that Anco is transferring all of these assets to KDR  
25 that they be paid for, the value of these assets, again, real

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1 and intellectual, those documents have to be turned over as  
2 part of the liability theory here.

3 MR. BROSTOWIN: What may complicate this somewhat  
4 eventually is that my client's wife is taking a marital  
5 property value to anything, anything that is held in Trinidad  
6 and Tobago, specifically Anco, it will be alleged, is KDR,  
7 whatever, that may complicate issues down the road, just to  
8 throw it out there.

9 THE COURT: I am sure it will, but I don't know that  
10 there is any solution.

11 MR. BROSTOWIN: I am just making a statement to your  
12 Honor.

13 THE COURT: The Anco documents need to be produced.  
14 The tax returns do not need to be produced.

15 With respect to the interrogatories, it seems like an  
16 issue that could be resolved by the parties. Interrogatories  
17 often have limited efficacy, so I am going to allow the  
18 plaintiff to select 15 interrogatories to serve on Andy  
19 Ramgoolie. I believe that would be adequate.

20 MR. BROSTOWIN: There may have been less than 15 asked  
21 for.

22 MR. BENDER: In more recent version there were.

23 MR. BROSTOWIN: In less than 15?

24 MR. BENDER: Less than 15.

25 THE COURT: Off the record.

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1 (Off-the-record discussion)

2 THE COURT: Thank you. So as to the production of  
3 documents, so we are in early October, today is October 4th,  
4 let's have those documents, I would like your clients make  
5 every effort to produce them as quickly as possible on an  
6 rolling basis.

7 MR. BROSTOWIN: I may have some of the documents. I  
8 may have some of the documents.

9 THE COURT: Wonderful. I will set an absolute  
10 backstop of November 1st, but it should be a rolling  
11 production.

12 MR. BROSTOWIN: Whatever I do have that is responsive  
13 I will get over to Mr. Bender immediately.

14 THE COURT: Anything further from either side?

15 MR. BROSTOWIN: No.

16 MR. BENDER: No.

17 THE COURT: Thank you.

18 (Court adjourned)